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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

A141608

v.

**(Contra Costa County
Super. Ct. No. 05-121877-5)**

GILL EDWARD TURNER,

Defendant and Appellant.

_____ /

A jury convicted appellant Gill Edward Turner of first degree murder (Pen. Code, § 187, subd. (a)) and found true various sentencing enhancement allegations. The court sentenced Turner to state prison. Turner appeals, contending: (1) the court erred by denying his motion for acquittal (Pen. Code, § 1118.1);¹ (2) trial counsel rendered ineffective assistance by failing to request CALCRIM No. 358; (3) the court erred by admitting evidence he associated with gang members; and (4) trial counsel rendered ineffective assistance by failing to object to the admission of rap lyrics he wrote.

We affirm.²

¹ Unless noted, all further statutory references are to the Penal Code.

² By separate order filed this date, we deny Turner's related petition for writ of habeas corpus (A144757) raising ineffective assistance of counsel claims.

FACTUAL AND PROCEDURAL BACKGROUND

The People charged Turner with the first degree murder (§ 187, subd. (a)) of Tony Reynolds and alleged sentencing enhancements.

Prosecution Evidence

A. Michael Amons's Death

Michael Amons (Michael) — one of Turner's step brothers — was known as "Animal."³ In October 2004, Michael, Reynolds, and a third man were in a car. Michael was in the driver's seat and Reynolds was in the front passenger seat. As Michael's car approached a stop sign, three or four armed men surrounded the car and shot Michael. Reynolds grabbed the car keys, got out of the car, and ran. Reynolds's "name came up every time anybody talk[ed] about [Michael's] death."

B. Reynolds's Death

In 2011, Turner and his girlfriend, Flouzel Paningbatan, lived together in Parchester Village in Richmond with Turner's step sister, Yolanda Amons, and Turner's step father, Terry Amons, Sr. On the evening of December 2, 2011, Turner and Paningbatan went to Santa Rosa, where Turner used cocaine. Turner and Paningbatan returned to Parchester Village at 5:00 or 6:00 a.m. on December 3, 2011, and Turner used cocaine again. Paningbatan fell asleep on the couch, but Turner stayed awake.

On the afternoon of December 3, 2011, Amons, Sr. was outside his house, talking to Reynolds. Leland Harrison — a onetime Parchester Village resident — was across the street. Harrison knew many people in Parchester Village, including Reynolds and Turner. Harrison saw Turner walk within a few feet of Reynolds. Turner shot Reynolds four times, looked at Harrison, and went inside the home he shared with Paningbatan and Amons, Sr. Harrison called a Richmond police officer and told him Turner — known as

³ We refer to certain family members who share a surname by their first names for convenience and clarity.

“Little Killer” — shot Reynolds.⁴ Harrison told the police “the only reason” Turner killed Reynolds was because Turner blamed Reynolds for Michael’s death. Harrison told the officer “Reynolds was in the car with Michael . . . when he got shot” and Turner had “been talking about it.”

Paningbatan woke up around noon on December 3, 2011 to the sound of gunshots. Paningbatan looked for Turner and found him nearby, at Marlon Robinson’s house. Turner acted normally and did not seem frightened or scared. Turner and Robinson smoked marijuana and talked about “the football game that was on and getting something to eat” until the police arrived. Robinson’s mother heard the police arrive; she asked Turner, ““You got anything on you?”” Turner responded, ““Yeah[,]”” and retrieved a “small gun” from his pocket. Robinson’s mother put the gun in a linen closet.

Police officers found Turner hiding in a closet and arrested him. In the linen closet, the officers found a .357 revolver containing six rounds of ammunition and an ammunition box with Turner’s fingerprints. The police found Reynolds on his back. His body had six gunshot wounds; the cause of death was a gunshot wound to his chest. Ballistics tests showed a bullet recovered from Reynolds body was fired from the .357 revolver.

C. Rap lyrics

A sheriff’s deputy searched Turner’s jail cell and found a folder with several pages of handwritten rap lyrics, including the following:

“It’s a lot a niggas in here that ain’t solid at all/Speck behind yo back my nigga dat ain’t gangsta at all/On da real, dats something I expeck from a broad/whoever raised u, I swer they did a taireable job/cause u’s a nurd and nall you ain’t wit da shit/u be frontin’, you ain’t never sent a bitch/Look in his eyes he wasn’t bulid for this shit/the stories is lies, fiction, urben books can’t ova look da truth I’m wit da shit/on da real, I ain’t tryna bring back da rich/just Parchester dat’s wat I do it for/Animal on da real. I love you

⁴ Harrison was an informal liaison between Parchester Village and the Richmond Police Department. A Richmond police officer gave Harrison \$300 after the police investigated Reynold’s death, because Harrison needed money to fix his car.

bro/Yhr In da billin and we shine'n Bro/Tay goin crazy Dip he da rowist Tho/Swich up never I really love all my bros and I'm rock'n untill the day the lord calls me home[.]”

Richmond Police Officer Stephen Purcell patrolled Parchester Village for six years. He reviewed the rap lyrics and explained their meaning to the jury. According to Officer Purcell, the word “nurd” in the lyric “cause u’s a nurd and nall you ain’t wit da shit” is a derogatory term for someone “who doesn’t back up what . . . they say they’re about.” The word “bitch” in ““u be frontin’, you ain’t never sent a bitch”” refers to sending a woman to a certain location to ensure the police are not around prior to a “drive-by shooting[.]” The lyrics, ““on da real, I ain’t tryna bring back da rich just Parchester dats what I do it for” mean the person is “trying to represent . . . Parchester.”

Another set of lyrics read: “It ain’t to many niggas like me. I’m just keep’n it real/I hear niggas talk’n but niggas aint squeez’n they steal/I’m locked up and niggas still aint squeez’n for gil/got dame, I though niggas was rock’n fo real/Wat happened to them niggas they still on the shelf/they old school trophys collet’n dust and nothing else/I guess it’s really true wat they say, outa site outa mind/that aint how I was raised, I was raised an eye for an eye/Slide, you know I do dat/Swich up, fuck nall ain’t no way I’m a do dat/I don’t fuck wit master splenters them niggas IS surer rats/and you can ask gong, he’a tell u that’s a fact I still rock wit a gleeko, yea I’m from da gAnimal rest in peace bro I’m play’n for keeps/I’m really livin this shit that you niggas rappin about/Just check my street crag I’m solid wit out a doubt.” Officer Purcell testified “squeeze your steel” means to fire a gun and “gleeko” is slang for “Glock pistol.” Officer Purcell did not have any knowledge or information Turner was a gang member.

Defense Evidence

Amons, Sr. testified about the Reynolds shooting. According to Amons, Sr., Turner seemed like he had taken “zombie pills” because he was walking “with his head down . . . he was going straight ahead.” Reynolds approached Amons, Sr. and Turner and said ““Hey, Terry”” and then said, ““Oh, hey, Little Killer.”” Turner said to Reynolds, ““That was my brother that you”” and fired his gun two times. Reynolds tried

to grab the gun; as the two men struggled, Turner fired several more shots. Turner spent time with people associated with the Parchester Villains street gang.

Turner testified in his defense. He was in custody at the California Youth Authority (CYA) when Michael died because he “made a mistake” and “did a robbery.” At the CYA, he “got hit in the forehead with a metal . . . pipe” and since that time, he had “on and off concussions where” he fades “in and out.” Turner loved Michael and had a good relationship with him. When Turner was released from the CYA in 2007, he heard rumors Reynolds was responsible for Michael’s death, but he did not make plans to kill Reynolds. Between 2004 and 2011, Turner saw Reynolds three or four times; they did not speak to each other.

On December 2, 2011, Turner went to Santa Rosa, where he used cocaine, smoked marijuana, and drank alcohol “all night[.]” He also used cocaine “a couple times” on December 3, 2011. Turner carried a gun for “protection.” At some point on December 3, 2011, Turner saw Reynolds. A friend told Turner that Reynolds was getting ready to “to leave” and told him, “Don’t trip.” Reynolds “came walking up the street” toward Turner, and Turner “felt scared” because of “the rumors around the neighborhood . . . like with [Michael’s] death and like people wanting to get him[.]” As Reynolds “walked up on” Turner and his friends, Reynolds “moved his hand a certain way . . . towards his jacket[.]” Turner got “scared and [] whipped out” his gun. Turner needed to pull out the gun to protect himself.

Reynolds grabbed Turner’s hand. As the men were “tussling[.]” the gun “went off[.]” Turner shot Reynolds, who fell to the ground. Amons, Sr. called Turner’s name and Turner ran into the house. Yolonda told Turner to leave the house and he hopped over the back gate and threw away the expended shells. Turner reloaded his gun because he was afraid. Then he went to Robinson’s house and smoked marijuana and drank Promethazine to “calm [his] nerves.” When the police arrived, Turner hid in the closet because he was afraid. Turner remembered little about the shooting because “everything just went blank” and he “just blacked out.” Turner regretted killing Reynolds. He had never fired his gun before shooting Reynolds.

Yolanda testified there was a memorial honoring Michael in the house she shared with Turner. A criminalist testified Reynolds had a .12 blood alcohol level when he was shot. Officer Purcell reviewed additional rap lyrics written by Turner and explained rappers boast about things they have not done to boost their street credibility. Turner admitted writing the rap lyrics but claimed they were not about a specific event — he was “not specifically talking about anything. . . . [T]his is all just make believe stuff[.]”

Acquittal Motion, Verdict, and Sentencing

At the close of the prosecution’s case, Turner moved for judgment of acquittal pursuant to section 1118.1, claiming the prosecution failed to offer evidence he “premeditated or planned this homicide in any way. There was no deliberation that was evidenced from [his] actions or any observations made by any witnesses which would show deliberation or premeditation.” In opposition, the prosecution argued there was sufficient evidence of premeditation based on the “methodology of the killing” and “the manner in which the victim was approached. . . .” The court agreed and denied the motion, explaining the jury could reasonably conclude “there was premeditation and deliberation by the . . . way in which the crime was committed, the manner in which the victim was approached, the fact that the victim was unarmed . . . and that it appeared that he was in a sense ambushed.”

The jury convicted Turner of first degree murder (§ 187, subd. (a)) and found he personally used a firearm in the commission of the crime (§ 12022.53, subd. (b)) and had a prior serious felony conviction (§ 667, subd. (a)(1)). The court sentenced Turner to 75 years to life in state prison.

DISCUSSION

I.

The Court Properly Denied Turner’s Acquittal Motion

Turner contends the court erred by denying his motion for acquittal pursuant to section 1118.1 because “the only substantial evidence of premeditation came in during

the defense case.”⁵ To determine “whether the evidence was sufficient . . . to support the denial of a section 1118.1 motion . . . ““[w]e do not determine the facts ourselves. Rather, we ‘examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ [Citations.] We presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] [¶] The same standard of review applies to cases in which the prosecution relies primarily on circumstantial evidence [Citation.] ‘[I]f the circumstances reasonably justify the jury’s findings, the judgment may not be reversed simply because the circumstances might also reasonably be reconciled with a contrary finding.’ [Citation.] We do not reweigh evidence or reevaluate a witness’s credibility.” [Citations.] . . . ‘[R]eview of the denial of a section 1118.1 motion made at the close of a prosecutor’s case-in-chief focuses on the state of the evidence as it stood at that point.’ [Citations.]” (*People v. Hajek* (2014) 58 Cal.4th 1144, 1182-1183.)

Murder “perpetrated by means of . . . willful, deliberate, and premeditated killing . . . is murder of the first degree.” (§ 189.) “An intentional killing is premeditated and deliberate if it occurred as the result of preexisting thought and reflection rather than unconsidered or rash impulse.” (*People v. Stitley* (2005) 35 Cal.4th 514, 543 (*Stitley*)). There are ““three categories of evidence relevant to resolving the issue of premeditation and deliberation: planning activity, motive, and manner of killing.’ [Citation.] However, these factors are not exclusive, nor are they invariably determinative. [Citation.] [The factors are] simply intended to guide an appellate court’s assessment whether the evidence supports an inference that the killing occurred as the result of preexisting

⁵ Section 1118.1 provides in relevant part, “In a case tried before a jury, the court on motion of the defendant . . . at the close of the evidence on either side and before the case is submitted to the jury for decision, shall order the entry of a judgment of acquittal of one or more of the offenses charged in the accusatory pleading if the evidence then before the court is insufficient to sustain a conviction of such offense or offenses on appeal.”

reflection rather than unconsidered or rash impulse. [Citation.]””” (*People v. Combs* (2004) 34 Cal.4th 821, 850.)

Here, the prosecution presented substantial evidence Reynolds’s murder was premeditated and deliberate, based on motive. The prosecution established Turner had a motive to kill Reynolds: Turner blamed Reynolds for Michael’s death. Reynolds was in the car when Michael was shot and fled. Turner’s girlfriend, Paningbatan, testified Reynolds’s name “came up every time anybody talk[ed] about [Michael’s] death.” Harrison, a onetime Parchester Village resident who knew both Reynolds and Turner, watched Turner walk within a few feet of Reynolds, and shoot him four times. Harrison told the police Turner blamed Reynolds for Michael’s death, and explained “Reynolds was in the car with Michael . . . when he got shot” and Turner had “been talking about it.” This evidence supports a finding of premeditation and deliberation. (*People v. Gonzales and Soliz* (2011) 52 Cal.4th 254, 295 [sufficient evidence of premeditation and deliberation where the defendants “targeted” the victims and had “the prospect of retaliation in mind”].)

Turner claims Harrison’s testimony is “completely speculative” and does not support a finding of premeditation and deliberation. We are not persuaded. ““The uncorroborated testimony of a single witness is sufficient to sustain a conviction, unless the testimony is physically impossible or inherently improbable.”” (*People v. Canizalez* (2011) 197 Cal.App.4th 832, 845, quoting *People v. Scott* (1978) 21 Cal.3d 284, 296.) Harrison’s opinion was based on personal knowledge, and was not inherently improbable: Harrison lived in Parchester Village for 64 years and knew neighborhood residents well. Moreover, Harrison’s testimony was consistent with Paningbatan’s testimony suggesting Turner was preoccupied with Reynolds’s involvement in Michael’s shooting.

The manner of the killing also supports a finding of premeditation and deliberation. Turner walked up to Reynolds and shot him from close range. After shooting Reynolds, Turner calmly looked at Harrison and walked inside his house. Turner acted normally after the shooting — he smoked marijuana with a friend and talked

about quotidian matters such as football and food. In jail, Turner wrote rap lyrics about preparing for a drive-by shooting, bragging about shooting a gun, invoking Michael's death, and describing how he "play[s] for keeps" and was raised with the principal of "an eye for an eye." This evidence supports an inference Turner acted with premeditation and deliberation. (*People v. Thompson* (2010) 49 Cal.4th 79, 114-115 [sufficient evidence of premeditation and deliberation where the defendant shot victim from "just a few feet" away and "without any provocation or evidence of a struggle"].)

Turner's claim that the "manner of killing was more consistent with rash, unconsidered action than with premeditation" fails because there is no evidence Reynolds and Turner argued before the shooting, or that Reynolds did something to provoke Turner. As we have discussed, the evidence supports a finding of premeditation and deliberation. Turner's argument fails for the additional reason that it does "not establish insufficient evidence, merely an alternative interpretation." (*People v. Gunder* (2007) 151 Cal.App.4th 412, 424 (*Gunder*), called into doubt on another ground in *People v. Moore* (2011) 51 Cal.4th 386.) We conclude the court properly denied Turner's section 1118.1 motion for acquittal because the prosecution offered sufficient evidence from which a "rational trier of fact could properly infer the presence of premeditation" and deliberation. (*Gunder, supra*, at p. 423.)

II.

Trial Counsel's Failure to Request CALCRIM No. 358 Was Not Prejudicial

As a defense witness, Amons, Sr. testified Turner said "[t]hat was my brother that you" just before firing two shots at Reynolds. On appeal, Turner argues trial counsel rendered ineffective assistance by failing to request CALCRIM No. 358, which instructs the jury to "[c]onsider with caution" any unrecorded statement made by the defendant tending to show his or her guilt.⁶ (*People v. Diaz* (2015) 60 Cal.4th 1176, 1183, fn.

⁶ CALCRIM No. 358 provides in relevant part: "You have heard evidence that the defendant made [an] oral . . . statement (before the trial/while the court was not in session). You must decide whether the defendant made any . . . statement, in whole or in part. If you decide that the defendant made such [a] statement, consider the statement,

omitted (*Diaz*.) A trial court has no sua sponte duty to instruct the jury with CALCRIM No. 358. (*Diaz, supra*, at p. 1189.) “The cautionary instruction is not one of the general principles of law upon which a court is required to instruct the jury in the absence of a request. The cautionary instruction does not reflect a legal principle with which jurors would be unfamiliar absent the instruction, and the defendant may not always want the instruction to be given. Nevertheless, the instruction may be useful to the defense in highlighting for the jury the need for care and caution in evaluating evidence of the defendant’s statements.” (*Ibid.*)

“An ineffective assistance claim has two components: A defendant must show that counsel’s performance was deficient, and that the deficiency prejudiced the defense.’ [Citations.]” (*In re Welch* (2015) 61 Cal.4th 489, 514.) Turner’s ineffective assistance of counsel claim fails because he cannot establish prejudice from trial counsel’s failure to request CALCRIM No. 358. (*In re Scott* (2003) 29 Cal.4th 783, 825 [declining to address whether counsel’s performance was deficient].) As Turner recognizes, numerous courts have concluded error in failing to instruct the jury with CALCRIM No. 358 is harmless where there is “no such conflict in the evidence, but simply a denial by the defendant that he made the statements attributed to him[.]” (*People v. Dickey* (2005) 35 Cal.4th 884, 906 (*Dickey*); *People v. Lopez* (2005) 129 Cal.App.4th 1508, 1529 (*Lopez*) [listing cases].)

Here, any failure to request CALCRIM No. 358 was harmless. Turner did not deny making the statements, and there was no “conflict in the evidence about the exact words used, their meaning, or whether the admissions were repeated accurately.” (*Lopez, supra*, 129 Cal.App.4th at p. 1529.) It is not reasonably probable Turner would have received a more favorable result had trial counsel requested the instruction because the

along with all the other evidence, in reaching your verdict. It is up to you to decide how much importance to give to the statement. [¶] [Consider with caution any statement made by [the/a] defendant tending to show [his/her] guilt unless the statement was written or otherwise recorded.” Turner does not contend the court erred by failing to give CALCRIM No. 358 sua sponte. (See *People v. Miranda* (2015) 236 Cal.App.4th 978, 990.)

evidence supporting the conviction was strong. As discussed above, the prosecution offered ample evidence supporting a finding of premeditation and deliberation. Defense evidence also supported an inference Turner had a motive to kill Reynolds: Yolanda testified there was a memorial honoring Michael in the house where Turner lived and Turner acknowledged being aware of rumors Reynolds was responsible for Michael's death. Turner admitted he had not spoken to Reynolds since 2007, and that his friend told Turner to remain calm around Reynolds. The prosecution also established Turner walked up to Reynolds and shot him at close range. Finally, the court instructed the jury on how it should determine the credibility of witnesses' statements and testimony and evaluate conflicting evidence, such as CALCRIM Nos. 226 [Witnesses], 302 [Evaluating Conflicting Evidence], and 318 [Prior Statements as Evidence]. Under the circumstances, it is not reasonably probable Turner would have obtained a more favorable result had trial counsel requested CALCRIM No. 358. (*Dickey, supra*, 35 Cal.4th at pp. 905-906.)

III.

Turner's Complaint About the Gang Evidence Fails

Turner contends the court erred by allowing the prosecutor to elicit evidence he had "recently been associating" with Parchester Villains gang members. The testimony about which Turner complains consists of the following:

"[PROSECUTOR]: Around . . . December 3rd [2011], did you notice if . . . Turner started hanging out with some kids in the neighborhood that were part of a local gang?

"[DEFENSE COUNSEL]: Relevance. Objection.

. . .

"THE COURT: . . . What is the relevance . . . ?

"[PROSECUTOR]: Goes to Officer Purcell's opinion that Mr. Turner is not in a gang.

"THE COURT: I'll allow it.

“[THE PROSECUTOR]: Around this period of time, did you notice if Mr. Turner was hanging out with some youngsters from Parchester Village?

“[AMONS, SR.]: Yeah, all the youngsters hang with each other down there.

“[THE PROSECUTOR]: And were some of the youngsters part of . . . a local gang called P Ville?

“[AMONS, SR.]: P Villain?

“[THE PROSECUTOR]: Correct.

“[AMONS, SR.]: Yes, I think so. I ain’t into that gangbanging stuff.

“[THE PROSECUTOR]: Okay. But did you notice that Mr. Turner was hanging out with some of these people —

“[AMONS, SR.]: Yeah.

“[THE PROSECUTOR]: — who belonged to P Ville [Parchester Villains]?

“[DEFENSE COUNSEL]: Objection. Assumes facts not in evidence and lacks foundation.

“THE COURT: As to foundation, sustained.

“[THE PROSECUTOR]: Around this period of time, did you notice that Mr. Turner was hanging out with other youngsters from Parchester Village?

“[AMONS, SR.]: Yes.

“[PROSECUTOR]: And these other youngsters, to your knowledge are they associated with the P Ville [Parchester Villains] gang?

“[DEFENSE COUNSEL]: Objection.

“[AMONS, SR.]: Yes.

“[DEFENSE COUNSEL]: Lacks foundation.

“THE COURT: I’ll allow the answer to stand.”

According to Turner, the evidence was more prejudicial than probative under Evidence Code section 352. We address the merits of Turner’s claim notwithstanding trial counsel’s failure to object on this ground in the trial court. (*People v. Smith* (2009) 179 Cal.App.4th 986, 1105 (*Smith*).) A trial court may “exclude evidence if its probative value is substantially outweighed by the probability that its admission will . . . create

substantial danger of undue prejudice. . . .” (Evid. Code, § 352.) “We review a trial court’s rulings on the admission . . . of evidence for abuse of discretion.” (*People v. Chism* (2014) 58 Cal.4th 1266, 1291.)

Assuming the court erred by allowing the prosecutor to elicit testimony Turner associated with Parchester Villains gang members, any error was harmless. (*Smith, supra*, 179 Cal.App.4th at p. 1006.) Evidence of Turner’s guilt was strong, while evidence supporting Turner’s claim of “imperfect self defense, or . . . accident or unconsciousness” was weak. The focus at trial was on Turner’s motive and the manner of killing, not on his connection to a gang — the prosecutor did not argue the Reynolds shooting was gang-related. Testimony that Turner associated with Parchester Villains gang members was a minor portion of the trial, consisting of a mere 20 lines in a multi-volume reporter’s transcript. Under the circumstances, it is not reasonably probable the jury would have returned a more favorable verdict had the court excluded the testimony. (*People v. Partida* (2005) 37 Cal.4th 428, 439 [erroneous admission of gang evidence was harmless under *People v. Watson* (1956) 46 Cal.2d 818, 836].)

Turner’s reliance on *People v. Avitia* (2005) 127 Cal.App.4th 185 (*Avitia*) does not alter our conclusion. There, the appellate court concluded the erroneous admission of gang evidence required reversal of the defendant’s conviction for grossly negligent discharge of a firearm. (*Id.* at p. 191.) The *Avitia* court explained: (1) “testimony that gang graffiti was found in [the defendant’s] room clearly insinuated [the defendant] was a gang member[;]” (2) a law enforcement officer’s “recitation of his experience dealing with criminal street gangs, coming immediately after the testimony about the posters, cannot but have strengthened this impression[;]” (3) evidence the defendant “was a gang member would have seriously undercut his defense[;]” and (4) the defendant’s “account of events was not implausible” and the People’s case was “not overwhelming.” (*Id.* at pp. 194-195.)

Avitia is distinguishable. Here, Amons, Sr. testified Turner was “hanging out” with “youngsters” associated with the Parchester Villains gang in December 2011. The prosecution did not argue Turner was in a gang, and Officer Purcell testified he had no

information Turner was in a gang. As a result, and in contrast to *Avitia*, there was no evidence — let alone evidence from a police officer — suggesting Turner “was a gang member.” (*Avitia*, *supra*, 127 Cal.App.4th at p. 194.) Unlike *Avitia*, testimony that Turner associated with gang members did not “seriously undercut his defense[,]” because it had nothing to do with Turner’s claim of self-defense, accident, or unconsciousness. (*Ibid.*) Finally, Turner’s account of the shooting was not believable, and the prosecution’s case was strong. (*Id.* at pp. 194-195.)

Even if the evidence Turner associated with Parchester Villains gang members “was improperly placed before the jury,” it is not “reasonably probable that the jury would have reached a different verdict in the absence of the [evidence].” (*People v. Luparello* (1986) 187 Cal.App.3d 410, 427.)

IV.

Turner Cannot Establish Trial Counsel Rendered Ineffective Assistance by Failing to Object to the Rap Lyrics

Turner claims trial counsel rendered ineffective assistance by failing to object when the prosecutor offered rap lyrics found in Turner’s jail cell. Turner contends the lyrics were inadmissible and inflammatory, and “would have been excluded with a timely objection” by trial counsel.

“‘Reviewing courts defer to counsel’s reasonable tactical decisions in examining a claim of ineffective assistance of counsel [citation], and there is a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.”’ [Citations.] ‘[W]e accord great deference to counsel’s tactical decisions’ [citation] and we have explained that ‘courts should not second-guess reasonable, if difficult, tactical decisions in the harsh light of hindsight’ [Citation.] ‘Tactical errors are generally not deemed reversible, and counsel’s decisionmaking must be evaluated in the context of the available facts.’ [Citation.]” (*People v. Weaver* (2001) 26 Cal.4th 876, 925-926.) “In the usual case, where counsel’s trial tactics or strategic reasons for challenged decisions do not appear on the record, we will not find ineffective assistance of counsel on appeal unless there could be no conceivable reason for counsel’s acts or omissions. [Citations.]”

(*Id.* at p. 926.) “[T]he ‘claim of ineffective assistance in such a case is more appropriately decided in a habeas corpus proceeding.’ [Citation.]” (*People v. Vines* (2011) 51 Cal.4th 830, 876, superseded by statute on another point in *People v. Robertson* (2012) 208 Cal.App.4th 965.)

Here, the record does not reveal why trial counsel failed to object to the admission of the rap lyrics and Turner’s contention that “there could be no reasonable tactical purpose” for failing to object is not persuasive. “An attorney may choose not to object for many reasons, and the failure to object rarely establishes ineffectiveness of counsel.” (*People v. Kelly* (1992) 1 Cal.4th 495, 540; *People v. Frierson* (1991) 53 Cal.3d 730, 747 [“mere failure to object to evidence . . . seldom establishes counsel’s incompetence”].) Trial counsel “may well have tactically assumed that an objection or request for admonition would simply draw closer attention” to the evidence. (*People v. Ghent* (1987) 43 Cal.3d 739, 773.) “[C]ompetent counsel may often choose to forgo even a valid objection. ‘[I]n the heat of a trial, defense counsel is best able to determine proper tactics in the light of the jury’s apparent reaction to the proceedings. The choice of when to object is inherently a matter of trial tactics not ordinarily reviewable on appeal.’ [Citation.]” (*People v. Riel* (2000) 22 Cal.4th 1153, 1197.) On the record before us, “we cannot eliminate the probability that defense counsel had valid tactical reasons for not objecting.” (*People v. Jones* (2009) 178 Cal.App.4th 853, 860.) Because it is possible Turner’s trial counsel had a rational tactical ground for not objecting to the rap lyrics, Turner’s claim of ineffective assistance of counsel fails. (*People v. Arce* (2014) 226 Cal.App.4th 924, 932.)

Finally, we reject Turner’s claim that the cumulative impact of the alleged errors deprived him of a fair trial. We have either rejected Turner’s claims of error and/or found that any errors, assumed or not, were not prejudicial. “Viewed as a whole, such errors do not warrant reversal of the judgment.” (*Stitely, supra*, 35 Cal.4th at p. 560.)

DISPOSITION

The judgment is affirmed.

Jones, P.J.

We concur:

Needham, J.

Bruiniers, J.